# In the Supreme Court of the United States

OCTOBER TERM, 1924

THE ST. LOUIS, KENNETT & SOUTHEASTERN Railroad Company

*v.*

THE UNITED STATES AND JAMES C. DAVIS, Director General of Railroads

No. 229

*APPEAL FROM THE COURT OF CLAIMS*

## BRIEF ON BEHALF OF APPELLEES

### STATEMENT OF THE CASE

This proceeding is an appeal from an order of the Court of Claims sustaining appellee's demurrer to appellant's amended petition filed in said court and dismissing the same.

In his amended petition appellant alleged that under the power granted by the act of Congress approved August 29, 1916 (39 Stat. 619, 645), the President of the United States on December 26, 1917, issued his Proclamation and thereby took possession and control of appellant's railroad and immediately appointed a Director General of Rail-

roads, who took possession and control of appellant's railroad and operated the same down to and including the 29th day of June, 1918; that the issuing of said Proclamation, the taking possession and control of appellant's railroad, and the operation thereof by the Director General of Railroads were approved by the act of Congress of March 21, 1918, known as the Federal Control Act (40 Stat. 451); that on the 29th day of June, 1918, the Director General relinquished possession and control of appellant's railroad, and from and after said date appellant resumed possession, control, and operation thereof; that the appellees thereby became liable to pay to appellant just compensation for the use, control, and operation of its railroad from January 1, 1918, to July 1, 1918; that said Director General of Railroads has and still refuses to pay appellant any compensation for said use, operation, and control of its said railroad; that the said Director General forced and compelled appellant to accept and sign a certain contract under date of February 26, 1919, a full, true, and correct copy of which was attached to and made a part of appellant's amended petition (Record, page 6); that said contract is null and void for the reason that the same was prepared and executed by the Director General without any power and authority so to do; that no consideration was created therein or intended to be created therein for the use and benefit of appellant; that during said period of six months from January 1 to July

1, 1918, because of the said control and operation of appellant's railroad it sustained a loss in its operating income and a further loss in the under-maintenance of its equipment and of its ways and structures and also on account of the Director General having failed and refused to furnish the necessary supplies and materials used in the operation of said railroad during the aforesaid period from January 1, 1918, to July 1, 1918; that after the Director General had refused to pay said claims or any part thereof appellant applied to the Interstate Commerce Commission for the appointment of a board of referees as provided by law, which application was granted and a board of referees was duly appointed, before whom the appellant duly presented its claim as above set forth; that said board of referees duly heard said claim and on June 14, 1922, decided the same and rejected the demands of the appellant, whereupon it filed its said amended petition in said Court of Claims.

To said amended petition appellees filed a demurrer upon the following grounds, to wit.

(1) Facts alleged in the petition do not constitute a cause of action within the jurisdiction of this Court.

(2) Facts alleged in the petition show a complete settlement and satisfaction of any and all claims plaintiff had or could have had against the United States or the Director General of Railroads under the Federal Control Act or on account of anything done or omitted to be done by the United

States of America or the Director General of Railroads in respect to the matters set forth in plaintiff's petition.

After argument and submission of said demurrer the said Court of Claims entered the following order:

> This case was submitted upon defendant's demurrer to plaintiff's amended petition on consideration whereof the Court is of the the opinion that the demurrer is well taken.
>
> It is therefore ordered, adjudged, and decreed that the defendant's said demurrer to the plaintiff's amended petition be sustained, and that the amended petition be and the same is hereby dismissed. (Record, Page 11.)

On November 19, 1923, appellant applied for appeal to this Court, which was allowed by the Court of Claims, and on December 3, 1923, the transcript of record was duly filed with the Clerk of this Court.

## BRIEF AND ARGUMENT

*The action of the Court of Claims in sustaining appellees' demurrer and dismissing appellant's case on the ground that the agreement of February 26, 1919, attached to and made part of his amended petition was a complete and full release and satisfaction of his claims sued on was fully warranted.*

This case turns on the release executed by appellant on February 26, 1919. Said agreement which was attached to and made part of appellant's

amended petition is set out in full in transcript (pp. 6–10). Section 3 of said agreement (Rec. p. 7) contains the release which appellees contend is in full settlement and discharge of appellant's claim now sued on. To rightly understand the scope of said release, we must consider the nature of the claim. The basis of said claim rests on the charge that on December 28, 1917, the President, by virtue of his Proclamation of December 26, 1917, took possession, control, and operation of appellant's railroad and retained said possession and control until July 1, 1918, thereby causing appellant certain losses for which it contends it is entitled to just compensation under the Constitution. It contends that its road was taken under Federal control by said Proclamation, but admits such possession and control were relinquished on June 30, 1918, and that from and after that date appellant resumed possession and operation of its property. Said agreement was executed February 26, 1919, eight months after appellant was in full possession and control of its property.

When the words are free from doubt they must be taken as the final expression of the parties. The language of the agreement controls and not what was said before Committees of Congress, *Mackenzie* vs. *Hare,* 239 U. S. 290. *Caminette* vs. *U. S.,* 242 U. S. 470. History of an act is admissable as an aid to construction only to solve doubt, not to create it. *Wisconsin R. R. Commission* vs. *Chicago & C. R. R.,* 257 U. S. 563. There is no ambi-

guity in the language used in section 3 of said agreement concerning the claims which were thereby settled and satisfied. Appellant's claims were claims arising by virtue of the alleged Federal control; without such control no such claims could have arisen. Said Section is as follows:

SECTION 3

> (a) The company accepts the terms and conditions of said Federal Control Act and terms of this agreement, and expressly accepts the covenants and obligations of the Director General in this agreement set out and the rights arising thereunder in full adjustment, settlement, satisfaction, and discharge of any and all claims and rights at law or in equity, which it now has or hereafter can have, against the United States, the President, the Director General or any Agent or Agency thereof *by virtue of anything done or omitted, pursuant to the acts of Congress herein referred to.*

The acts of Congress referred to in said agreement are—

(a) The joint resolutions of the Senate and House of Representatives bearing the date April 6 and December 7, 1917, and

(b) The act of Congress approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes. (39 Stat. 619, 645.)

(c) The Federal Control Act approved by the President March 21, 1918. (40 Stat. 451.)

According to the foregoing language in said section 3 of said agreement, if appellant's claim now sued on arose by *virtue* of the President's Proclamation of December 26, 1917, or by *virtue* of any act of omission or commission by the Director General under the Federal Control Act and a right of action for compensation arising therefrom had accrued to appellant prior to February 26, 1919, the date of the execution of said agreement, said release embraced the same. From appellant's amended petition, it must be conceded that the claims now sued on arose by virtue of its railroad having been under Federal control from January 1, 1918, to July 1, 1918, on which latter date its right of action accrued for just compensation arising out of said Federal control.

In *United States* v. *William Cramp & Sons,* 206 U. S. 118, 128, wherein the language used was less comprehensive than in the agreement in the case at bar, this Court in holding the language used in said case covered "all claims" said:

> (a) Stipulations of this kind are not to be shorn of their efficiency by any narrow, technical, and close construction. The general language "and all manner of debts," et cetera, indicates a purpose to make an ending of every matter arising under or by virtue of the contract. If parties intend to leave some things open and unsettled, their intent so to do should be made manifest.

The Court in *Kirchner* v. *New Home Sewing Machine Co.* (Court Appeals N. Y.) 31 N. E. 1104, says: "In the early case of *Pierson* v. *Hooker,* 3 Johns 68, the release was of and from all debts and demands of every nature and kind whatsoever" and evidence was offered and excluded at the trial to show that at the time of its execution, it was not intended to include the demand in suit; and Chief Justice Kent held the ruling correct, saying (p. 70). "The instrument is general and comprehensive and expressly reaches to every debt and demand of every kind. To show by parole proof that it was not so intended is to contradict or explain away the instrument, which is contrary to the established rule of law." The Court in the *Kirchener* case further said "it is competent for a person by his own act to forego a recovery for unknown as well as known causes of action. Construing the language of a release, as we must, most strongly against the grantor, if words are used fairly importing a general discharge, the effect can not be limited by the bare proof that the releasor had no knowledge of the existence of the demand in controversy."

*Slayton* v. *Hamkill,* 36 N. Y. Supp. 249, a general release between persons will, so long as it is not set aside, bar action by one against the other for a cause existing at the time of the release, though not known by the plaintiff. (Cites *Kirchener case, supra.*) See also *Clark* v. *Roberts* (Mass.) 62 N. E. 253.

While not obliged to do so, it was the policy of the Government to extend assistance to the short lines that had been relinquished upon certain conditions embodied in a short-line agreement tendered to such short lines generally. In that agreement the Government proposed to make certain concessions or agreements in favor of the short lines. Without attempting to point out all of such concessions and agreements, we call attention to the following:

In section 5 of the agreement the Government proposed to agree with the short lines that divisions of joint rates should be fair and that the divisions in effect January 1, 1918, should not be decreased and that in any increase in joint rates the short line should share in the same percentage as then in effect.

In section 6 of the agreement the Government proposed to agree to allot to the short lines an equitable proportion of its cars (and motive power, if feasible), and to grant a reclaim allowance on lines like that of appellant of two days. This reclaim allowance means two days' free time for the short line for use of all cars furnished the short line by the Director General.

In section 7 of the agreement the Government proposed to agree that the short line may use the Government's purchasing agencies and purchase supplies at the cost to the Government. On account of the Government purchasing in large volume, this agreement would doubtless mean a con-

siderable saving to the short line. The Government also, in such Section, proposed to permit the short line to have its repairs made in the Government's shops, the same as prior to Federal control.

In section 9 of the agreement the Government proposed to agree that in the conduct of its transportation business and in publishing tariffs and rates it would not discriminate against the short line and in favor of its own lines.

In section 13 of the agreement the Government proposed to agree to compensate the short line for any loss it suffered prior to November 1, 1918, on account of diversion of traffic from the short line, and to see to it thereafter that the short line should receive the same proportion of competitive traffic that it had transported during the test period. In consideration of such and other concessions in the agreement proposed the Director General required the short line to agree that if necessity should arise therefor, in the opinion of the Director General, he could resume possession and operation of the railroad, in which event a new contract should be made providing for the "payment of compensation as provided by the Federal Control Act."

These were some of the considerations offered appellant for its release and satisfaction of its claim for compensation for its alleged losses for the first six months of 1918, growing out of the alleged Federal control of its railroad. The appellant acknowledged satisfaction in full of all the claims it then had (February 26, 1919) in consideration of the

benefits for which it bargained. If they have proved less advantageous to the appellant than it anticipated, such fact will not release it from the obligations of its contract. The courts only require a legal consideration and do not inquire into the adequacy thereof, as between parties permitted to contract without the intervention of a guardian.

Appellant suggests a lack of authority in the Director General to make the contract referred to. No reason or authority is suggested in support of such contention. Section 1 of the Federal Control Act expressly gives the Director General, thru the President, absolute authority in the premises. Proclamations of the President appointing the Director General expressly give him all of the power conferred by Congress on the President except that of appointing the Director General.

Section 9 of the Control Act is as follows:

> The President in addition to the powers conferred by this Act shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred.

In this Court appellant abandons the claims set out in its amended petition, viz., that said agreement was executed under duress and that the Director General was without authority to enter into such agreement because on Page 27 of its brief it states:

> It is not alleged nor now claimed that the contract was wholly void because of total

lack of consideration or because the same was executed under forceable and legal duress.

In conclusion, with all due respect to the learned counsel for appellant we are unable to comprehend the argument wherein he contends that this settlement evidenced by section 3 of said agreement did not include compensation, if any, which accrued prior to July 1, 1918. Language could not, we think, be so framed or used as to be of broader import or significance. The agreement says " all claims and rights," both " in law and in equity " which plaintiff " now has or hereafter can have." By what legerdemain can the claims now presented be excluded from " all claims and rights," which the plaintiff " now has " on February 26, 1919, the date of the agreement? What other claims or rights did the appellant have against the Government or against the Director General of Railroads at the time of making the agreement in question? There is no suggestion that the Government was owing the appellant anything on account of any matter occurring or any cause of action accruing after the railroad was relinquished. What, then, was the appellant acknowledging was thus fully satisfied and settled? Under the allegations of the amended petition there could not possibly have been any other claim.

For the reason suggested we respectfully ask that the action of the United States Court of Claims in

sustaining the demurrer and dismissing the petition should be affirmed.

Respectfully submitted.

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